

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES LUIS DICKINSON,

Defendant and Appellant.

H041091

(Santa Cruz County

Super. Ct. No. F24909, F25181)

Defendant James Luis Dickinson challenges the denial of his motion to dismiss a prior strike conviction under Penal Code section 1385¹ and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). Defendant argues that the trial court abused its discretion in denying relief. For the reasons stated here, we will affirm the judgment.

I. FACTUAL AND PROCEDURAL HISTORY

On June 11, 2013, around 2:00 p.m., Santa Cruz Police Officer Michael Hedley responded to the Best Western Plus All Suites Inn (Best Western) to investigate a burglary of a hotel room. The victim reported that at some time between 11:45 a.m. and 1:30 p.m., someone had stolen a laptop computer, an iPad, and a bag of clothing from his room. Officer Hedley viewed the hotel security footage, which showed defendant and a woman, Jennifer Peterson, walking up the stairs. Four minutes later, they walked down the stairs carrying the victim's duffel bag.

¹ Unspecified statutory references are to the Penal Code.

One day after the Best Western incident, Santa Cruz Police Officer Ken Deeg responded to the Santa Cruz Dream Inn to investigate a burglary of a hotel room. The victim reported that he and his family had left the room around 12:00 p.m., but returned to retrieve something they had forgotten. When the victim returned, he saw Peterson standing in the hallway outside his room. Peterson said “Maid” when the victim approached. The door to the room was open, and the victim saw defendant inside the room. Defendant and Peterson left together down the hall to the elevator.

In July 2013, the district attorney charged defendant with first degree residential burglary (§ 459) for the Santa Cruz Dream Inn incident (case No. F24909). The information in that case also alleged that defendant suffered a prior serious felony strike (§ 667, subds. (a), (b)–(i)) for a 1995 burglary (§ 459) conviction and five prison priors (§ 667.5, subd. (b)).

In August 2013, the district attorney charged defendant with first degree residential burglary for the Best Western incident (case No. F25181). As with the information in case No. F24909, the information in case No. F25181 also alleged a prior strike conviction (§ 667, subds. (a), (b)–(i)) and five prison priors (§ 667.5, subd. (b)).

In October 2013, the trial court consolidated the two cases, and defendant pleaded no contest to both charges of first degree residential burglary (§ 459). He also admitted a prior strike conviction (§ 667, subd. (b)). As to the prison prior allegations, defense counsel pointed out that although there were five different cases, there were only three prison commitments. Defendant admitted three prior prison terms (§ 667.5, subd. (b)).

A probation report prepared for the sentencing hearing summarized defendant’s criminal history. From July 1989 to the current offenses in 2013, defendant was convicted of various misdemeanors and felonies in 24 different cases.

Before defendant’s 1995 strike, he was convicted of one felony drug offense and two felony counts of unlawful taking and driving of a vehicle. He was also convicted of

six misdemeanors, including several drug offenses, theft, receiving stolen property, and refusing to comply with an officer's orders.

In April 1995, defendant was convicted of his first strike, residential burglary (§ 459). He was sentenced to seven years in prison. The record does not include any other facts regarding the prior strike.

After committing the strike and serving the prison sentence, defendant was convicted of three counts of misdemeanor domestic violence offenses in 2001. From then on, defendant was convicted of nine more misdemeanors, including numerous drug offenses, theft, a counterfeit currency offense, receiving stolen property, resisting an officer, and defrauding an innkeeper. He was also convicted of a felony domestic violence offense (§ 273.5) in 2005, for which he was sentenced to four years in prison. He was convicted of two felony drug offenses in February and June 2012. He was granted probation for both those felony convictions, and he was on probation for those crimes when he committed the most recent offenses. The probation report notes that after he had been granted probation in February 2012, he violated probation three times; after he had been granted probation in June 2012, he violated probation once. The report also states that defendant had been noncompliant with the terms of probation, having failed to maintain contact with the probation department after his release from custody.

Defendant moved to dismiss the prior strike allegation under section 1385 and *Romero*. In support of his motion, defendant asserted that his present crimes were nonviolent in nature. He pointed out that the only time he was confronted by a victim, he walked away without touching the victim or taking any property. As to his prior strike offense, defendant pointed out that it was a residential burglary that occurred a long time ago, in 1995. Defendant asserted that his present crimes were motivated by his drug addiction, and that he had a desire to recover from his addiction. He stated that he was accepted into the Delancey Street Foundation drug treatment program, which was the toughest program. He argued that in light of his willingness to take responsibility for his

actions and to participate in the hardest drug treatment program, the trial court should grant his *Romero* motion.

In opposition, the prosecution argued that defendant's willingness to complete a drug treatment program was too late. Defendant had been on parole and probation several times before, and he was on probation at the time he committed the underlying offenses. He thus had numerous opportunities to participate in a similar treatment program, but he had failed to do so. Moreover, defendant had poor performance on probation and parole and was a " 'revolving-door defendant.' " The prosecution argued that given defendant's poor performance on parole, his criminal history, and the seriousness of his offenses, the trial court should deny the *Romero* motion.

At the hearing, the trial court denied the *Romero* motion. In explaining its ruling, the court emphasized the fact that defendant's current offenses were the same as his prior strike offense (i.e., residential burglary). The court also recounted that defendant had multiple prison priors, including one for his strike in 1995 and then another one in 2005. Further, after the strike, defendant continued to commit numerous drug possession and sale offenses, a domestic violence offense, and a theft related offense. The court observed that there had not been a time when "he's been outside the jurisdiction of the courts for even a year where he didn't pick up new offenses."

The court acknowledged defendant's acceptance into the Delancey Street Foundation program, his early admission of responsibility, and his willingness to participate in the program. Nonetheless, the court stated that it could not overlook the fact that defendant had not done well on parole and continued to reoffend.

The trial court also observed that the present case involved two separate first degree burglaries of hotel rooms. The court noted that similar to a burglary of a private home, breaking into a hotel room has the same potential for danger and that people at hotels are entitled to the same sense of safety and security. Further, the court observed that defendant took a leadership role in these crimes and induced someone else to

participate. The court also found that these crimes were sophisticated in nature and premeditated. In denying the *Romero* motion, the trial court stated, “In weighing and considering all of the factors which are set forth in the cases, I feel compelled to deny the *Romero* motion. I just do not feel that the case law with Mr. Dickinson’s facts, circumstances, and individual situation allows [dismissal of the strike].”

After denying the motion, the trial court sentenced defendant to 11 years 8 months in prison.

II. DISCUSSION

The California Supreme Court established in *Romero* that a trial court is empowered under section 1385, subdivision (a) to dismiss prior strike convictions in cases brought under the “Three Strikes” law. (*Romero, supra*, 13 Cal.4th at pp. 529–530.) The court’s discretion, however, is limited to instances in which dismissing such strikes is in the furtherance of justice, giving due consideration to both “ ‘the constitutional rights of the defendant, and *the interests of society represented by the People ...* ’ ” (*Id.* at p. 530.) Thus, the court may not dismiss a sentencing allegation “solely ‘to accommodate judicial convenience or because of court congestion’ [citation, or] ... simply because a defendant pleads guilty. [Citation.] Nor would a court act properly if ‘guided solely by a personal antipathy for the effect that the [T]hree [S]trikes law would have on [a] defendant,’ while ignoring ‘defendant’s background,’ ‘the nature of his [or her] present offenses,’ and other ‘individualized considerations.’ ” (*Id.* at p. 531.)

The *Romero* court noted that in deciding whether to dismiss a prior strike “ ‘in furtherance of justice’ pursuant to Penal Code section 1385 (a), or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of [the defendant’s] present felonies and prior serious and/or violent felony convictions, and the particulars of [the defendant’s] background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence

should be treated as though [the defendant] had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*)). Defendant’s sentence “is also a relevant consideration ... in fact, it is the overarching consideration because the underlying purpose of striking prior conviction allegations is the avoidance of unjust sentences. [Citation.]” (*People v. Garcia* (1999) 20 Cal.4th 490, 500 (*Garcia*)).

If a trial court dismisses one or more prior strikes, its reasons for doing so must be stated in an order entered on the minutes. (*Romero*, at p. 531.) Conversely, a trial court has no obligation to set forth its reasons for deciding *not to* dismiss prior strikes. (*In re Large* (2007) 41 Cal.4th 538, 546, fn. 6; see also *In re Coley* (2012) 55 Cal.4th 524, 560.) “The absence of such a requirement merely reflects the legislative presumption that a court acts properly whenever it sentences a defendant in accordance with the three strikes law.” (*People v. Carmony* (2004) 33 Cal.4th 367, 376 (*Carmony*)).

We review the trial court’s denial of a *Romero* motion for abuse of discretion. (*Carmony*, *supra*, at p. 375.) “This standard is deferential. [Citations.] But it is not empty. Although variously phrased in various decisions [citation], ... it asks in substance whether the ruling in question ‘falls outside the bounds of reason’ under the applicable law and the relevant facts. [Citations.]” (*Williams*, *supra*, at p. 162; *Garcia*, *supra*, at p. 503.) It is the defendant’s burden as the party attacking the sentencing decision to show it was arbitrary or irrational, and, absent such showing, there is a presumption that the court “ ‘ “acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” ’ [Citations.]” (*Carmony*, *supra*, at p. 377.) Such a discretionary decision “ ‘ “will not be reversed merely because reasonable people might disagree.” ’ ” (*Ibid.*)

Placing in context the circumstances under which a court properly exercises its discretion in granting a *Romero* motion, the California Supreme Court has explained: “[T]he three strikes law not only establishes a sentencing norm, it carefully circumscribes

the trial court's power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper. [¶] In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances.” (*Carmony, supra*, at p. 378.) “Because the circumstances must be ‘extraordinary ... by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he [or she] squarely falls once he [or she] commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary.” (*Ibid.*; *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1382 [“trial courts’ decisions to strike a prior conviction should be ‘ “extraordinary” ’ ”].)

Where, as here, a defendant possesses a long and continuous criminal record, several courts have stated that such a defendant cannot reasonably be outside the spirit of the Three Strikes law. (*People v. Gaston* (1999) 74 Cal.App.4th 310, 322–333 (*Gaston*) [reversing dismissal of a 17-year-old strike for a defendant whose most recent crime was a non-violent, non-serious car theft, but had a 26-year record of recidivism]; *People v. Strong* (2001) 87 Cal.App.4th 328, 339–340 (*Strong*) [reversing dismissal of a strike which was the only violent crime in the defendant’s 22-year criminal history]; *Williams, supra*, at pp. 162–163 [reversing dismissal of a strike where the defendant had not refrained from criminal activity in the 13 years between the strike and the most recent offense].)

Defendant has a long criminal history, which spans 24 years and consists of 18 misdemeanors and nine felonies. His first conviction was in 1989 for a felony drug offense. He committed eight other offenses before his strike in 1995. After the strike, he resumed his criminal activity in 2001 by committing misdemeanor domestic violence

offenses and then a misdemeanor drug offense in 2003. In 2005, he committed a felony domestic violence offense and was sentenced to prison for four years. In 2010, he resumed criminal activity and was convicted of crimes in 11 more cases, including the present felony offenses in 2013. Defendant's criminal record reveals no significant period of time in which he has been outside of the courts' jurisdiction. The probation report notes that defendant's present offenses were committed while he was on probation and that in past instances where he was placed on parole or probation, he had violated those terms and conditions multiple times.

The record here shows a number of other relevant factors supporting the trial court's denial of the *Romero* motion. In reviewing the nature and circumstances surrounding defendant's present felonies, the trial court pointed out that the present offenses were the same type of offense as his prior strike (i.e., residential burglary). That factor weighs against dismissal of the strike because it suggests that defendant had not learned from his earlier conviction. (*Strong, supra*, at p. 344 [finding that the similarity between the present and prior offenses weighed against dismissal of the strike].) The trial court also noted that defendant took a leadership role in his current crimes; that the burglaries were sophisticated and premeditated; and that the crimes invaded hotel patrons' safety and security much like burglarizing a private home (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 318 [finding factors that make home burglaries dangerous are likewise present in hotel room burglaries]). The present offenses were also not victimless crimes.

The record contains little information about the nature and circumstances of the 1995 prior strike other than the fact that it was a residential burglary (§ 459). Although it occurred almost 20 years before the present offenses, the mere remoteness of the strike offense is not significant in light of its identical charge and defendant's long and continuous criminal record in those intervening years. (*Gaston, supra*, 74 Cal.App.4th at p. 321 [remoteness of a strike occurring 17 years earlier was not dispositive given

defendant's continuous criminal record]; *People v. Barrera* (1999) 70 Cal.App.4th 541, 554–555 [refusing to dismiss a 14-year-old strike where the defendant's criminal activity continued after release from prison]; *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813 [reversing dismissal of a 20-year-old strike where the defendant did not live a “ ‘legally blameless life’ ” since committing the strike].) As discussed above, defendant was convicted of misdemeanors and felonies in 14 other cases following his strike conviction, and there were no significant periods where he had been out of custody and did not reoffend.

As to the relevant factors weighing in defendant's favor, he points to the fact that his crimes were related to his drug addiction and that he was willing to participate in the Delancey Street Foundation program to seek help for his addiction. The trial court acknowledged defendant's acceptance and willingness to participate in the Delancey Street Foundation program, but also noted defendant's multiple opportunities in the past to seek drug treatment while on probation or parole. The trial court properly weighed the mitigating factors here against the factors which did not support dismissal of the 1995 strike. Contrary to defendant's argument, the record amply demonstrates that the trial court was aware of its discretion to grant defendant's *Romero* motion. In light of all the relevant factors, the court did not abuse that discretion in denying the motion.

III. DISPOSITION

The judgment is affirmed.

Grover, J.

WE CONCUR:

Rushing, P.J.

Márquez, J.

The People v Dickinson
H041091